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OFFICE OF PETITIONS

In re Application of
Phillip G. Rorex
Application No. 09/813,965
Filed: March 22, 2001
Attorney Docket No. 2700-101

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ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 18, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed May 21, 2004 which set a shortened statutory period for reply of three (3) months. A reply under 37 CFR 1.113 is limited to an amendment that *prima facie* places the application in condition for allowance or a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)). The amendment submitted on September 21, 2004 did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed March 1, 2005. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed. Extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on September 22, 2004.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$455 extension of time submitted with the petition on April 18, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center AU 2654.


Wan Laymon

Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy